IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

WRIT PETITION NO.1106 OF 2007

Shaebir Hasan Khan .. Petitioner.
Versus
Union of India & Others .. Respondents.

Mr.S.U. Kamdar with Mr.Bipin Joshi for the petitioner.
Mr.Y.S. Bhate with Mr.D.A. Dubey for respondent Nos.1 to 4.
Mr.P.P. Chavan with Mr.Rajmani Varma for respondent No.5.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 20TH JULY, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The respondents had prevented the petitioner from removing the sewarage-silt from the sewage tanks located in the SEEPZ area and removing it out without paying the necessary duty. On 4th July, 2007, the matter had come up before this Court. The contract in favour of the petitioner has been given by respondent No.5. Counsel for respondent No.5 on that day had confirmed the contention urged on behalf of the petitioner herein that the contract entered into by the petitioner with respondent No.5 as a term contract, includes the responsibility of the petitioner cleaning the sewerage tanks on behalf of respondent No.5. We had also issued interim directions.

3. The matter had now come up for final hearing. An affidavit has been filed by Shaebir Hasan Khan - petitioner. Para 1 of the said affidavit reads as under :

> Without prejudice to my rights and contentions, I submit that I shall remove the silt (stilt) in trucks/trailors from Seepz Area pursuant to contract granted by Respondent No.5 M.I.D.C. The said trucks trailors/seal goods will be made available for Respondent No.1 to 4 for the purpose of weighing and taking/drawing samples in my presence or in the presence of my representatives. I shall not dispute the quantity and the percentage of the contents of Gold/Silver dust which will be revealed in test report to be furnished by the Government of India Mint. I reserve my rights to contest show cause notice on all points available in law including that the seal / gold / silver dust found in seal are not dutiable items.

On behalf of the revenue, learned counsel points out that apart from gold and silver dust there is also platinum dust. Learned counsel on instructions from the petitioner makes a statement that platinum dust forms part of the said affidavit and they so undertake to the Court. The said undertaking as also what is set out in para 1 of the affidavit is accepted.

4. Considering the above, present petition can be disposed off by issuing the following directions:

i) It will be open to the petitioner to

remove the sewerage / silt subject to further directions as contained hereinafter.

ii) The practice of taking samples either from the vehicle or the container as ordered by our interim order will apply to all removal of sewerage, silt hereinafter.

iii) It will be open to the revenue to issue show cause notice to the petitioner according to law if those be excisable item and dispose of the same according to law.

iv) If there will be an adverse order passed against the petitioner, they will be bound by the said order subject to whatever remedy they have against that order.

v) If an order is passed against the petitioner, all subsequent removals will be subject to such order as passed by the revenue subject to whatever remedy the petitioner have against said order.

5. Rule is made absolute accordingly with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)